
Commerce & Labor Committee

HB 1349

Brief Description: Requiring collective bargaining regarding hours of work for individual providers.

Sponsors: Representatives Conway, DeBolt, Morrell, Roach, Wood, Campbell, Green, Appleton, McCoy, Springer, Sells, Hunt, B. Sullivan, Simpson, P. Sullivan, Williams, Chase, Hankins and Ormsby.

Brief Summary of Bill
<ul style="list-style-type: none">Requires, as a mandatory subject of bargaining, negotiations over proposed Department of Social and Health Services rules or policies if the rules or policies are likely to result in a significant decrease in the number of hours worked by individual providers.

Hearing Date: 1/31/05

Staff: Chris Cordes (786-7103).

Background:

Long-term Care Services

The Department of Social and Health Services' (DSHS) contracts with agency and individual home care workers (individual providers) to provide long-term care services for elderly and disabled clients who are eligible for publicly funded services through the DSHS's Aging and Adult Services and Developmental Disabilities programs. These services are provided through the Medicaid Personal Care program, state-funded programs such as Chore, or under a home and community-based waiver granted by the federal Department of Health and Human Services, which allows the program to continue receiving federal Medicaid funds. Home care workers provide DSHS clients with personal care assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores. The individual providers are hired and fired by the client, but are paid by the DSHS.

The Home Care Quality Authority (HCQA) has responsibility for establishing qualifications for individual providers, recruiting and training individual providers, and assisting clients to find care by establishing a referral registry.

"Shared Living" Rule

In implementing the long-term care services program, the DSHS adopted a rule, generally known as the "shared living" rule, under which the DSHS will not pay for services such as shopping, housework, laundry, or meal preparation if the individual provider lives in the same household with the client. According to hearing examiner findings made in an unfair labor practice case filed with the Public Employment Relations Commission (PERC), this rule has resulted in a 15 percent deduction from the hours allotted to individual providers as compensation for their services in homes where they also reside.

Collective Bargaining for Individual Providers

Individual providers have collective bargaining rights under the Public Employees' Collective Bargaining Act (PECBA) administered by the PERC. Individual providers do not have the right to strike and are covered by the binding interest arbitration provisions of the PECBA. For purposes of bargaining, the Governor is the "public employer."

This law was revised in 2004 to explicitly state that wages, hours, and working conditions are determined solely through collective bargaining and, except for the HCQA, no state agency may establish policies or rules governing wages or hours of individual providers. However, this new provision also states that it does not modify various responsibilities of the DSHS, including the authority to establish a consumer's plan of care and determine the hours of care for which a consumer is eligible. In addition, it does not modify the Legislature's right to make programmatic modifications to the state's long-term care services program.

Negotiations in 2004

The first contract to be implemented under the individual provider collective bargaining law is effective until June 30, 2005. By law, negotiations for a new agreement must begin by May 1 of the year before the year in which an existing collective bargaining agreement expires. In April 2004, the union representing the individual providers and the Governor's Labor Relations Office began negotiating for a successor contract. By August, a PERC mediator determined that the parties were at impasse on several issues. One of these issues involved the "shared living" rule. The parties entered arbitration, and an arbitrated contract was awarded on October 6, 2004.

On August 31, 2004, the Office of Financial Management filed an unfair labor practice with the PERC, alleging that the union failed to bargain in good faith by insisting on submitting some issues, including the "shared living" rule issue, to arbitration. The PERC hearing examiner agreed that the union had committed an unfair labor practice, finding that the Legislature intended the DSHS to retain its core responsibility to administer the home care program and to set the hours of care and the plan of care for clients receiving services. The union has appealed the hearing examiner's decision to the PERC.

Summary of Bill:

If the Department of Social and Health Services proposes rules or policies that are likely to result in a significant decrease in the number of hours worked by individual providers, the proposed rule or policy is a mandatory subject of bargaining. However, this bargaining requirement does not apply to rules or policies that are implementing a programmatic modification made by the Legislature to the long-term care services program.

Rules Authority: The bill makes certain DSHS rules subject to collective bargaining.

Appropriation: None.

Fiscal Note: Requested on January 25, 2005.

Effective Date: The bill contains an emergency clause and takes effect immediately.